SUPREME COURT OF THE UNITED STATES

No. 328.

ISRAEL DEMING, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.*

In the Court of Claims.

ISRAEL DEMING
vs.
THE UNITED STATES.

To the honorable judges of the Court of Claims:

Your petitioner, Israel Deming, a citizen of the District of Columbia, respectfully represents unto your honors that in the month of November, A. D. 1363, he entered into a contract with William B. Slack, the quartermaster of the United States marine corps, to furnish, during the year 1864, all the rations that might be required for said marine corps, at Brooklyn, N. Y., Philadelphia, Pa., and Washington city, D. C., at the rate of $22 47 per one hundred rations at Washington city, D. C., and $23 70 per one hundred rations at Philadelphia and Brooklyn; and for such rations so furnished petitioner was by said contract to be paid quarter yearly; that is to say, at the termination of each and every quarter during said year.

That in pursuance of said contract he furnished the rations for the quarter ending March 31, 1864, for which he was paid by the government of the United States. That he also furnished all the rations required under said contract for the quarter ending June 30, 1864, at the places specified in said contract, but that payment for 12,867 rations so furnished at Brooklyn aforesaid, and amounting to $3,049 90, was refused, although claimant made frequent applications for such payment, from and after the expiration of said quarter and prior to the eleventh day of July then next, both to the said quartermaster and to the Assistant Secretary of the Treasury, but was refused for the alleged reason that there was not sufficient money in the treasury.

Claimant also furnished to said marines, from the first day of July to the tenth day of July inclusive, as follows: at Brooklyn, 1,455 rations, amounting to $344 83; also at the same place, groceries amounting $59 15; at Philadelphia, 1,479 rations, amounting to $350 52, and groceries amounting to $264 90; and at Washington aforesaid, 3,127 rations, amounting to $702 63. And the entire claim of claimant as aforesaid amounts to four thousand seven hundred and seventy-one dollars and ninety-three cents, ($4,771 93,) no portion of which amount has been paid to claimant.

Claimant further represents that he furnished all the rations and performed all the acts required of him by the terms of such contract up to the tenth day of July, A. D. 1864, when, by reason of the breach of said contract on the part of the United States, claimant was compelled to and did cease furnishing the rations, and notified the said quartermaster that unless claimant was paid the amount due upon the quarter ending on the 30th of June, 1864, he should refuse to furnish more rations—after which no rations were demanded or furnished under said contract.

Claimant insists that, also, the United States not only committed a breach of said contract in the non-payment as aforesaid, but also in

the passage of the joint resolution of April 29, 1864, and the act of Congress approved June 30, 1864, imposing additional duties upon such articles included in such rations as were imported, to wit, sugars, tea, and coffee, by reason of which resolution and act of Congress petitioner would necessarily be compelled to pay upon the purchase thereof an amount increased to the amount of such import duties.

Your petitioner further states that he is the sole owner of said claim; that he has at all times borne true allegiance to the government of the United States; that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said government.

And your petitioner, as in duty bound, will ever pray, &c.

A. L. MERRIMAN,
Claimant's Solicitor.

DISTRICT OF COLUMBIA, *City and County of Washington, ss:*

Israel Deming, the above claimant, being first duly sworn, deposes and says that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts stated in said petition are true.

ISRAEL DEMING.

Subscribed and sworn to before me, this 17th day of May, A. D. 1865.

[SEAL.] EDGAR H. BATES,
Justice of the Peace.

Filed May 20th, 1865.

2 In the United States Court of Claims, October term, A. D. 1865.

THE UNITED STATES *ats.* ISRAEL DEMING. } No. 2,160.

And the said defendants, by John J. Weid, their solicitor, come and make answer to the petition of the claimant on file herein, and not confessing the same, or any part thereof, doth hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States is indebted to said claimant in the sum of four thousand seven hundred and seventy-one dollars and ninety-three cents, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

JOHN J. WEID,
Assistant Solicitor for the United States.

Filed May 25, 1865.

3 In the Court of Claims.

And now, to wit, 5th December, 1865, the court upon due consideration of the premises, do order, adjudge, and decree that the said claimant take nothing by his suit, and that the said petition be dismissed.

By the court.

4 United States Court of Claims.

ISRAEL DEMING
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

Your petitioner, Israel Deming, the claimant in the above case, respectfully represents that on the third day of May, A. D. 1865, the said cause came on to a hearing before said court upon the petition, answer, and proof filed in said cause. That on the 5th day of December, A. D. 1865, the said circuit court delivered its opinion upon the law and facts in said cause; which opinion is as follows:

The United States, through their quartermaster, contract with the claimant for rations to be furnished daily to the marine corps during the year 1861. In August of that year Congress imposes an additional duty on articles which constitute a part of the rations so to be furnished. The claimant, nevertheless, furnishes the rations during the remainder of the year and thereby suffers loss.

The United States again contract with the claimant for similar rations to be furnished during the year 1862. In February of that year Congress passes the legal-tender act, whereby the cost of the rations so to be furnished is increased. The claimant, nevertheless, again furnishes them, and again suffers loss. He now claims that by these enactments the United States have changed, and in effect imposed new conditions upon the performance of their two contracts, and that thereby he has suffered $3,558 48 damages.

In the case of Latham against the United States, wherein this court pronounced upon the constitutionality of the legal-tender act, the services had been performed before the enactment of the last-named law, while the payment had been deferred until after the depreciation of the national currency. Here the rations forming the foundation of the claim were furnished after the enactment of both statutes. In that case the contract was performed; in this it was to be performed. In the one case the party did not complain of the amount paid to him, but objected to the kind of money in which it was paid; in the other the claimant does not object to the kind of money, but insists that he was not paid enough. In the former case the party admitted that the contract had been complied with, but protested that the satisfaction of it was incomplete; that the treasury notes tendered to him were illegal, and that the act under which they were issued was void. In this case the claimant admits that act was constitutional, and that the treasury

notes were lawful money, but claims that the contract was changed and in effect violated. The claimant in the first case objected that a new kind of money was coined after his work was done; the claimant in the second case insists that new conditions were imposed before his contract was executed. The claimant is understood to present his claim as if he had repudiated the contract entirely, and had framed his petition in the nature of a declaration in assumpsit and laid his damages in quantum meruit. The case therefore is different from that of Latham, and does not come under any of the decisions of the legal-tender act.

This statement of his case is plausible, but is not sound. And herein is its fallacy: that it supposes general enactments of Congress are to be construed as evasions of his particular contract. This is a grave error. A contract between the government and a private party cannot be specially affected by the enactment of a general law. The statute bears upon it as it bears upon all similar contracts between citizens, and affects it in no other way. In form the claimant brings this action against the United States for imposing new conditions upon his contract; in fact he brings it for exercising their sovereign right of enacting laws. But the government, entering into a contract, stands not in the attitude of the government exercising its sovereign power of providing laws for the welfare of the state. The United States as a contractor are not responsible for the United States as a law giver. Were this action brought against a private citizen, against a body corporate, against a foreign government, it could not possibly be sustained. In this court the United States can be held to no greater liability than other contractors.

Judgment must be for the United States. The order of the court is that the petition be dismissed.

5 And thereupon pronounced judgment in favor of the United States, and ordered the said petition of petitioner to be dismissed.

Petitioner claims that the said court erred in its opinion thus delivered, and in the rendition of the judgment aforesaid, in this, to wit:

1st. The court err in deciding that where a contract is entered into between the claimant and the United States, that the United States have the power, through its legislative capacity, to enact a general law, affecting such contract without reparation to claimant.

2d. The court err in deciding that "the United States as a contractor are not responsible for the United States as a lawgiver."

3d. The court also erred in deciding that although the petitioner was compelled to pay an increased price for the portion of the rations furnished by him, under the contract of 1861, in amount equal to the duties imposed upon such articles by the act of August 5, 1861, entitled "An act to provide increased revenue from imports to pay interest on the public debt and for other purposes;" yet that the United States were not liable to claimant for such amount so paid, occasioned by such duties so levied under said act.

4th. The contract for the year 1862 was entered into while the

only money known in law was gold and silver; and the court erred in deciding that a payment in treasury notes was sufficient payment under said contract.

5th. The court also erred in deciding that although the petitioner was compelled to pay an increased price for the rations to be furnished to the United States under the contract for the year 1862, by reason of the passage of the act approved February 25, 1862, entitled, "An act to authorize the issue of United States notes and for the redemption or funding thereof, and for funding the floating debt of the United States," yet that the United States are not liable therefor to claimant.

6th. The court erred in rendering judgment for the United States, and in the order dismissing the petition of claimant.

Wherefore claimant prays an appeal in said cause to the Supreme Court of the United States.

ISRAEL DEMING,
per A. L. MERRIMAN,
His Solicitor.

Filed April 25th, 1866.

6 Court of Claims.

ISRAEL DEMING
vs.
THE UNITED STATES.

The claimant's petition of appeal in this case not having correctly and accurately stated the errors alleged to have been committed by the Court of Claims in the judgment rendered upon the petition and answer in this case as required by the rule of the Supreme Court in such cases made and provided, the specifications of error are hereby altered and modified as follows:

7 The court find as matters of fact:

First. That in the month of November, 1860, the claimant entered into a contract with the quartermaster of the marine corps of Washington city to furnish, during the year 1861, all the rations that might be required for said marine corps, at the rate of about sixteen ——— dollars per one hundred rations, which rations consisted, among other things, of ten pounds of good coffee, or in lieu thereof one and a half pounds of tea, and fifteen pounds of good New Orleans sugar for each hundred rations.

That on the fifth day of August, A. D. 1861, the Congress of the United States passed an act entitled an "act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," which act was approved and went into force on the day of its passage; that in and by such act a duty was imposed on all sugars of the quality specified in such contract of two and one-half cents per pound, and on all coffee a duty of four cents per pound, and that by reason of such duties so imposed the claimant was necessarily compelled to pay a price for all sugars and coffee so furnished, after the

passage of said act, increased in amount by such duties, it being necessary to import said articles for consumption and use.

That he fulfilled his said contract in all respects, and furnished to said quartermaster as such rations, after the passage of such act,
8 seven thousand four hundred and eighty-two pounds of sugar, upon which the increase of the price in consequence of such act of Congress, was one hundred and seventy-seven dollars and five cents; and that he furnished to said quartermaster, after the passage of such act, as a portion of such rations, four thousand seven hundred and thirty-five pounds of coffee, on which was an increase in price, in consequence of such act, the sum of one hundred and eighty-nine dollars and forty cents.

Second. That in the month of October, A. D. 1861, he entered into a contract with said quartermaster to furnish the rations of a similar kind as those specified for said marine corps during the year 1862; that at the time such contract was entered into gold and silver was the only legal money of the United States; that after the making of such contract Congress passed an act, which was appended February 25, 1862, entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States;" that notwithstanding such act the claimant fulfilled such contract in all respects, and was paid the amount stipulated in said contract in such United States notes, but contrary to the wish and demand of claimant, who demanded gold and silver, or its equivalent, and received said notes, protesting that he was not paid in accordance with the true intent and meaning of said contract. That shortly after the said act went into operation the value of said United States notes depreciated in value as compared with gold and silver, but that the business of the country became and was predicated upon the basis of such United States notes; and that the prices of merchandise increased in proportion to the depreciation of such notes, and that consequently the claimant was compelled, in his purchases of the goods necessary to be furnished upon said contract, to pay such increased prices that the goods so furnished under said contract during the months of July, August, September, October, November, and December, A. D. 1862, amounted to the sum of thirteen thousand one hundred and seventy-two dollars and fifty-six cents, and that the actual difference between the value of the United States notes so received by claimant for said months and gold was the sum of three thousand one hundred and eighty-two dollars and four cents.

9 And thereupon the court decided and adjudged, as matters of law, upon the facts aforesaid as follows, to wit:

I. That although the claimant was compelled to pay an increased price for the portion of the rations described in the petition which were furnished by him, under his contract of 1861, subsequent to the statute entitled "An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5, 1861, amounting to a sum equal to the duties imposed upon the said articles by the said statute, yet that the de-

fendants were not liable to the claimant therefor, and that the said statute was a general law, which did not alter, violate, or annul the particular contract of the claimant.

10 II. That although the claimant's contract for 1862 was entered into while the only money known was gold and silver, and although the claimant was compelled to pay an increased price for the rations furnished to the United States under his said contract for the year 1862, by reason of a statute entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States," approved February 25, 1862, yet that the defendants were not liable to the claimant therefor, and that the said statute was a general law which did not alter, violate, or annul the particular contract of the claimant.

11 In the Court of Claims.

ISRAEL DEMING
vs.
THE UNITED STATES.

JUNE 21ST, 1866.

Ordered, that the appeal in the above-named case be allowed, and that it be certified, with such alteration and modifications of the petition for the same as are filed by the court.

BY THE COURT.

12 In the Court of Claims.

ISRAEL DEMING
vs.
THE UNITED STATES.

I, Sam'l H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing is a true transcript of the pleadings in the above-entitled case and of the judgment of the court thereon, and of the petition of the claimant for the allowance of an appeal, filed on the 25th day of April, A. D. 1866; and of the alterations and modifications of the points decided and alleged for error, as certified by the court; and of the order of the court allowing the appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 27th day of June, A. D. 1866.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

Attest:

JOS. CASEY,
Ch. J. C't of Cl.

SUPREME COURT OF THE UNITED STATES.

No. 39.

DECEMBER TERM, 1868.

ISRAEL DEMING, APPELLANT,

vs.

THE UNITED STATES.

AMENDMENT TO RECORD, FILED DECEMBER 18, 1868.

In the Court of Claims.

I, Sam'l H. Huntington, chief clerk of the Court of Claims, do hereby certify that the printed paper hereunto attached is a true copy of the original petition in the case of Israel Deming vs. the United States, as decided in said court on the 5th day of December, A. D. 1865, from which decision due appeal was allowed on the 21st day of June, A. D. 1866.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 15th day of December, A. D. 1868.

[SEAL.] SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

In the Court of Claims.

Petition.

ISRAEL DEMING
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

Your petitioner, Israel Deming, a citizen of the District of Columbia, respectfully represents unto your honors that in the month of November, A. D. 1860, he entered into a contract with the quartermaster of the marine corps of Washington City to furnish during the year 1861, all the rations that might be required for said marine corps, at the rate of about sixteen ——— dollars per one hundred rations, which rations consisted, among other things, of ten pounds of good coffee, or, in lieu thereof, one and a half pounds of tea, and fifteen pounds of good New Orleans sugar for each hundred rations.

Petitioner further states that on the fifth day of August, A. D. 1861, the Congress of the United States passed an act entitled an "Act to pro-

vide increased revenue from imports to pay interest on the public debt, and for other purposes," which act was approved and went into force on the day of its passage; that in and by such act a duty was imposed on all sugars of the quality specified in such contract of two and one-half cents per pound, and on all coffee a duty of four cents per pound, and that by reason of such duties so imposed petitioner was necessarily compelled to pay a price for all sugars and coffee so furnished after the passage of said act increased in amount by such duties, it being necessary to import said articles for consumption and use.

Petitioner further states that he fulfilled his said contract in all respects, and furnished to said quartermaster as such rations, after the passage of such act, seven thousand four hundred and eighty-two pounds of sugar, upon which the increase of the price in consequence of such act of Congress was one hundred and seventy-seven dollars and five cents; and that he furnished to said quartermaster, after the passage of such act, as a portion of such rations, four thousand seven hundred and thirty-five pounds of coffee, on which was an increase in price, in consequence of such act, the sum of one hundred and eighty-nine dollars and forty cents.

Petitioner further states that in the month of October, A. D. 1861, he entered into a contract with said quartermaster to furnish the rations of a similar kind as those specified for said marine corps during the year 1862; that at the time such contract was entered into gold and silver was the only legal money of the United States, and the said contract was entered into upon the basis of and with the understanding that the payments for such rations were to be made in gold and silver; that after the making of such contract Congress passed an act which was appended February 25, 1862, entitled "An act to authorize issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States," by the terms of which act the United States notes to be issued under said act were to be lawful money and a legal tender in payment of all debts, public and private, except certain debts in favor of the United States; but whether such notes thereby became lawful money petitioner respectfully submits to your honors; that notwithstanding such act petitioner fulfilled such contract in all respects, and was paid the amount stipulated in said contract in such United States notes, but contrary to the wish and demand of petitioner, who demanded gold and silver, or its equivalent, in all instances, and received said notes, protesting that he was not paid in accordance with the true intent and meaning of said contract. Petitioner states that shortly after the said act went into operation the value of said United States notes depreciated in value as compared with gold and silver, but that in consequence of the terms of such act the business of the country became and was predicated upon the basis of such United States notes; and that in consequence thereof the prices of merchandise increased in proportion to the depreciation of such notes; and that consequently your petitioner was compelled, in his purchases of the goods necessary to be furnished upon said contract, to pay such increased prices; that the goods so furnished by petitioner under said contract during the months of July, August, September, October, November, and December, A. D. 1862, amounted to the sum of thirteen thousand one hundred and seventy-two dollars and fifty-six cents, and that the actual difference between the value of the United States notes so received by petitioner for said months and gold was the sum of three thousand one hundred and eighty-two dollars and four cents and that petitioner has actually lost said sum of three thousand one

hundred and eighty-two dollars by means of his being compelled to receive his pay in said United States notes.

Petitioner further claims from the government of the United States the sum of three thousand five hundred and fifty-eight dollars and forty-nine cents.

Your petitioner further states that he is the sole owner of said claim; that he has at all times borne true allegiance to the government of the United States; that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said government; and your petitioner as in duty bound will ever pray, &c.

VANDERWERKEN & MERRIMAN,
Claimant's Solicitors.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Israel Deming, the above claimant, being first duly sworn, deposes and says that no assignment or transfer of said claim or any part thereof or any interest therein has been made; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts stated in said petition are true.

ISRAEL DEMING.

Subscribed and sworn to before me this 25th day of April, A. D. 1864.

[SEAL.] EDGAR H. BATES,
Justice of the Peace.

[Stamp.]

In the Court of Claims.

Amendment to record.

I, Sam'l H. Huntington, chief clerk of the Court of Claims, do hereby certify that the printed paper hereunto attached is a true copy of the original petition in the case of Israel Deming *vs.* The United States, as decided in said court on the 5th day of December, A. D. 1865, from which decision an appeal was allowed on the 21st day of June, A. D. 1866.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 15th day of December, A. D. 1868.

[SEAL.] SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

In the Court of Claims.

Petition.

ISRAEL DEMING
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

Your petitioner, Israel Deming, a citizen of the District of Columbia, respectfully represents unto your honors, that in the month of November, A. D. 1860, he entered into a contract with the quartermaster of the marine corps of Washington city to furnish, during the year 1861, all the rations that might be required for said marine corps, at the rate of about sixteen dollars per one hundred rations, which rations consisted, among other things, of ten pounds of good coffee, or in lieu thereof one and a half pounds of tea, and fifteen pounds of good New Orleans sugar for each hundred rations.

Petitioner further states, that on on the fifth day of August, A. D. 1861, the Congress of the United States passed an act entitled "An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," which act was approved and went into force on the day of its passage; that in and by such act a duty was imposed on all sugars of the quality specified in such contract of two and one-half cents per pound, and on all coffee a duty of four cents per pound, and that by reason of such duties so imposed petitioner was necessarily compelled to pay a price for all sugars and

coffee so furnished after the passage of said act increased in amount by such duties, it being necessary to import said articles for consumption and use.

Petitioner further states, that he fulfilled his said contract in all respects, and furnished to said quartermaster as such rations, after the passage of such act, seven thousand four hundred and eighty-two pounds of sugar, upon which the increase of the price in consequence of such act of Congress was one hundred and seventy-seven dollars and five cents; and that he furnished to said quartermaster, after the passage of such act, as a portion of such rations, four thousand seven hundred and thirty-five pounds of coffee, on which was an increase in price, in consequence of such act, the sum of one hundred and eighty-nine dollars and forty cents.

Petitioner further states, that in the month of October. A. D. 1861, he entered into a contract with said quartermaster to furnish the rations of a similar kind as those specified for said marine corps during the year 1862; that at the time such contract was entered into gold and silver was the only legal money of the United States, and the said contract was entered into upon the basis of and with the understanding that the payments for such rations were to be made in gold and silver; that after the making of such contract Congress passed an act which was appended February 25, 1862, entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States," by the terms of which act the United States notes to be issued under said act were to be lawful money and a legal tender in payment of all debts, public and private, except certain debts in favor of the United States, but whether such notes thereby became lawful money, petitioner respectfully submits to your honors, that notwithstanding such act petitioner fulfilled such contract in all respects, and was paid the amount stipulated in said contract in such United States notes, but contrary to the wish and demand of petitioner, who demanded gold and silver or its equivalent in all instances, and received said notes protesting that he was not paid in accordance with the true intent an meaning of said contract. Petitioner states that shortly after the said act went into operation the value of said United States notes depreciated in value as compared with gold and silver, but that in consequence of the terms of such act the business of the country became and was predicated upon the basis of such United States notes; and that in consequence of thereof the prices of merchandise increased in proportion to the depreciation of such notes; and that consequently your petitioner was compelled, in his purchases of the goods necessary to be furnished upon said contract, to pay such increased prices that the goods so furnished by petitioner under said contract during the months of July, August, September, October, November, and December, A. D. 1862, amounted to the sum of thirteen thousand one hundred and seventy-two dollars and fifty-six cents, and that the actual difference between the value of the United States notes so received by petitioner for said months and gold was the sum of three thousand one hundred and eighty-two dollars and

four cents; and that petitioner has actually lost said sum of three thousand one hundred and eighty-two dollars by means of his being compelled to receive his pay in said United States notes.

Petitioner further claims from the government of the United States the sum of three thousand five hundred and fifty-eight dollars and forty-nine cents.

Your petitioner further states that he is the sole owner of said claim, that he has at all times borne true allegiance to the government of the United States; that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said government; and your petitioner, as in duty bound, will ever pray, &c.

VANDERWERKEN & MERRIMAN,
Claimant's Solicitors.

DISTRICT OF COLUMBIA, *City and County of Washington, ss*:

Israel Deming, the above claimant, being first duly sworn, deposes and says: That no assignment or transfer of said claim or any part thereof or any interest therein has been made; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsetts, and that he believes the facts stated in said petition are true.

ISRAEL DEMING.

Subscribed and sworn to before me this the 25th day of April, A. D. 1864.

[SEAL.]

EDGAR H. BATES,
Justice of the Peace.

[Stamp.)

Endorsed: Supreme Court U. S. 1868. Dec. term, No. 39. Israel Deming v. The U. States. Amendment to record. Filed 18 December, 1868.

SUPREME COURT OF UNITED STATES.

ISRAEL DEMING
vs.
THE UNITED STATES.

This is an appeal from the Court of Claims, which court finds the following facts:

First. That in the month of November, 1860, the claimant entered into a contract with the Quartermaster of the Marine Corps of Washington City, to furnish, during the year 1861, all the rations that might be required for said Marine Corps, at the rate of about sixteen dollars per 100 rations, which rations consisted, among other things, of ten pounds of good coffee, or, in lieu thereof, 1½ pounds of tea, and 15 pounds of good New Orleans sugar for each 100 rations.

That on the 5th day of August, 1861, Congress passed an act entitled "An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," which act was approved and went into force on the day of its passage. That in and by said act a duty was imposed on all sugars of the quality specified in such contract of 2½ cents per pound, and on all coffee a duty of 4 cents per pound, and that, by reason of such duties so imposed, the claimant was necessarily compelled to pay a price for all sugars and coffee so furnished after the passage of said act increased in amount by such duties, it being necessary to import such articles for consumption and use. That he fulfilled his contract in all respects, and furnished to said Quartermaster, after the passage of said act, 7,482 pounds of sugar, upon which the increased price, in consequence of such act of Congress, was $177.05; and that he furnished to the Quartermaster, after the passage of such act, as a portion of such rations, 4,735 pounds of coffee, on which was an increase in the price, in consequence of such act, of $189.40.

Second. That in October, 1861, he entered into a contract with said Quartermaster to furnish the rations of a similar kind as those

specified, for said Marine Corps, during the year 1862. That, at the time such contract was entered into, gold and silver was the only legal money of the United States. That after the making such contract Congress passed an act, which was approved Feb'y 25, 1862, entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States." That, notwithstanding such act, the claimant fulfilled such contract in all respects, and was paid the amount stipulated in such contract in United States notes, but contrary to the wish and demand of claimant, who demanded gold and silver, or its equivalent, and received such notes, protesting that he was not paid in accordance with the true intent and meaning of said contract. That shortly after the said act went into operation, the value of said United States notes depreciated in value, as compared with gold and silver, but that the business of the country became and was predicated upon the basis of such United States notes, and that the prices of merchandise increased in proportion to the depreciation of such notes, and that consequently the complainant was compelled, in his purchases of the goods necessary to be furnished upon said contract, to pay such increased prices. That the goods so furnished under said contract during the months of July, August, September, October, November and December, 1862, amounted to the sum of $13,172.56, and that the actual difference between the value of the United States notes so received by claimant for said months and gold was the sum of $3,182.04.

The Court decided adversely to the claimant, and that the aforesaid acts were general laws, and did not either violate or annul the contracts of claimant.

In one respect the principles of law governing contracts apply to each of the contracts. It is an attempt by one contracting party—the Government—after entering into a solemn contract with one of its citizens, to attempt by Legislative action to impose new conditions upon its performance by the claimant, without his consent; thus, in effect, violating the contract; in the one case, by compelling the contractor by subsequent legislation to pay to the Government a certain sum of money in the shape of specific duties upon goods to be furnished to itself; and in the other case, claiming the privilege of paying its obligations in a species of money not known at the time of the contract, and of less value.

It is immaterial in which point to view the transaction equitably, whether as a payment in money different from that contemplated in the contract, or whether by the establishment of a different species of money, for the party equally was the sufferer by this change in the contract, the record showing that upon the basis of the currency established under this act, the party was compelled to pay prices proportionately higher, and that the goods so contracted advanced in market in proportion to the depreciation of the currency.

A legal contract once made, cannot be changed or altered by one party without the consent of the other party thereto, and this applies as well to the Government as to individuals. And if one party, by any act of his, increases the amount to be performed by the other party, he is liable to the extent of the value of such increase. It is not enough to say, that the one contracting party, by virtue of its power to pass general laws, can thereby increase the onus of a contract with itself. The obligation of a contract is the law that binds the party to perform his undertaking. (4 Wheaton, 197.)

It is a principle of universal jurisprudence that laws civil and criminal must be prospective, and cannot have retroactive effect.

Dash vs. Van Kleek, 7 Johnson, 477. In this case, Justice Kent remarks, "It is a principle in the English common law, as ancient as the law itself, that a statute even of its omnipotent Parliament is not to have a retrospective effect. This case, and the cases quoted in the several opinions of the judges composing the court, clearly establish the doctrine that no law can take retrospective effect, unless such effect is expressed in the most unequivocal manner." There is another question involved in the second contract. The act of February 25, 1862, provides that "such notes herein authorized shall be receivable in payment of all taxes, internal duties, &c., and shall also be lawful money and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid."

This question involves the powers of Congress under the Constitution. Section 8, article 1. of the Constitution defines the powers granted to Congress, subject to the prohibitions contained in the ninth section, among which powers so granted is the power to coin money and regulate the value thereof and of foreign coin; also to borrow money on the credit of the United States also to

regulate commerce with foreign nations and among the several States, and, in conclusion, to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Congress being a creature of the Constitution, it can have no power except such as is delegated to it thereby, either in express terms or by implication, and as the only implied powers granted to Congress by the Constitution is contained in the clause last above quoted, the range of argument is consequently limited to the construction of such powers as are granted in the preceding part of the section, as enumerated powers. The power to coin money is to make money out of coin, and this power is connected with the power to regulate the value thereof, and also of foreign coin. The evident intention in this clause, taken in connection with the prohibition of the power to the States, was to establish an uniform system of currency, founded upon such a relative value of the material to be used in such coinage as should furnish a species of money that might be used, not only throughout this country, but in our commercial intercourse with foreign nations. It could not have been the intention of the framers of the Constitution to grant to Congress, the power of making money from anything but coin—certainly not the power to stamp a purely artificial value upon a piece of worthless paper and characterize such an article money. Such a species of legislation must, of necessity, occasion a complete commercial non-intercourse with other sections, or else compel the absurdity of establishing two kinds of money—one for home commerce, and one for foreign commerce. Again, the power to regulate the value of foreign coin could only be exercised in pursuance of the commercial laws, of the relative value of the coinage of foreign nations and of the coinage of the United States. The exercise of the power, as claimed, to establish a money of nominal value merely, would, by the vicissitudes of trade—the greater or less amount of such currency afloat—lead to such disastrous results, in the way of the rapid appreciation and depreciation of property, and the consequent bankruptcy and ruin of some, the sudden wealth of others, that it cannot for a moment be conceived that the framers of the Constitution had any intention of granting such a dangerous power. The power is not contained in the language of the Constitution; the intention of such a power is not to be presumed.

These notes so issued under the act of February 25, 1862, however, do not profess to be money—they are simply "promises to pay" on the part of the Government. They were then issued under the power granted "to borrow money on the credit of the United States," and are bills of credit issued under authority of the United States. This power is not denied; but the power to emit bills of credit, and the power to make such bills of credit a legal tender in the payment of debts, are distinct. Each of these powers is expressly prohibited to the States; the reason of which is obvious, which was to prevent a recurrence of the disastrous effects of this class of legislation, prior to that time exercised by some of the States. The power to emit bills of exchange had been used by the Congress during the Revolutionary war, an instance of which was the Continental money, so-called, but Congress did not even then pretend to have the power to make such bills of credit legal tender. Justice Story, in his Commentaries upon the Constitution, paragraph 1,367, says: "None of the bills of credit issued by Congress, during the whole period of the Revolution, were made a legal tender; and, indeed, it is questionable if that body possessed the constitutional authority to make them such; at any rate, never did attempt it, but recommended that the States should make them a tender." This experiment proved anything but a success, however, as history fully demonstrates. This experience was doubtless one of the influences that induced the framers of the Constitution to prohibit this power to the States.

There being no express power in Congress to make any thing but coin legal tender, where is the implied power to do it? Is it under the power of regulating commerce? The power of making money is a substantive and independent power enumerated in the Constitution, and although money is necessary to commerce, so also are many of the other enumerated powers, and in this view I conceive that it was the intention of the framers of the Constitution to limit the general powers of Congress, to such powers as are expressly enumerated, with the power as granted in the concluding clause of enacting such laws as were necessary and proper to carry into execution these powers. It neither enlarges any power specifically granted, nor is it a grant of any new power. Story Com., par. 1,243—in which the learned commentator sums up the subject, as follows: "Whenever, therefore, a question

arises concerning the constitutionality of a particular power, the first question is whether the power be *expressed* in the Constitution. If it be, the question is decided. If it be not *expressed*, the next inquiry must be whether it be properly an incident to an express power, and *necessary to its execution*. If it is, then it may be exercised by Congress. If not, Congress cannot exercise it."

It is clear, therefore, that a power cannot be implied from one enumerated power to overreach another enumerated power, in which the same is expressly defined, and the power to regulate commerce cannot by implication extend the power to coin money. Such cannot be a necessary incident to the carrying into proper execution the former power. Mr. Daniel Webster, whose great legal learning entitled his opinions to great weight, and who, in his day, maintained the greatest degree of liberality in the construction of the powers of Congress under the Constitution, in his speech on the specie question, while advocating the use of paper money, uses the following language: "But, if we understand by currency the *legal money* of the country, and that which constitutes a lawful tender for debts and is the statute measure of value, then, undoubtedly, nothing is included but gold and silver. Most unquestionably there is no legal tender, and there can be no legal tender in this country under the authority of this Government, or any other, but gold and silver, either the coinage of our own mints, or foreign coins at rates regulated by Congress. This is a constitutional provision, perfectly plain, and of the very highest importance. The States are expressly prohibited from making any thing but gold and silver a tender in payment of debts, and although no such express prohibition is applied to Congress, yet as Congress has no power granted to it in this respect, but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper, or any thing else, for coin, as a tender in payment of debts and in discharge of contracts."

Likewise, although there is no express prohibition to Congress to pass laws impairing the obligation of contracts, yet there is such a prohibition to States, and power is expressly given to Congress to establish uniform laws on the subject of bankruptcy throughout the United States, therefore the power over the subject of laws impairing the obligation of contracts is limited to that method of doing so.

It would, I think, be in vain to seek for any authority, express or implied, giving Congress the power to pass laws impairing the obligations of its own contracts. The Government may, under pressing exigencies, and under the principle of eminent domain, not only take the money, but the property of its citizens. Yet, in such case the Constitution provides that just compensation shall be made for such use, so careful were the framers of that instrument of the rights of individuals; and taking the entire instrument into consideration, it cannot, I think, be determined that there was any intention to authorise Congress to establish any laws tending to change or violate any contract, that might be made either by the Government or between individuals.

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IN THE UNITED STATES SUPREME COURT.

ISRAEL DEMMING, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

SUPPLEMENTARY BRIEF OF APPELLANT.

This was a suit brought to recover the difference in value between $13,172.56 as paid in legal tender notes and gold and silver coin, which difference the Court below finds to have been $3182.64

In order to more fully establish the equities of the case it was alleged in the petition, that in order to fulfil the contract upon the part of the appellant, if performed upon the basis of the legal tender currency, upon which basis the main commercial business of that time was performed, he was still damnified by the refusal to pay in the manner provided in the contract to the extent of such difference in value between those different species of money. And the Court so found. So that this is not a case of law unsupported by equitable principles.

The contract (as the Court find) was entered into when gold and silver was the only legal money of the United States, and as contracts must be construed in accordance with the intention of the parties at the making therof; and as the contract is silent as to the kind of money in which payment was to be made; the law determines the intention of the parties, and the construction of the contract. If the question had then been before the Courts, as to the kind of money required for payment. Under the contract, there could have been but one decision; that payment should have been made in the legal money of the United States.

This case, therefore, comes within the principle decided by this court in the case of Bronson vs. Rodes, 7th Wallace Reports 246, in which the court, both in the opinion of the court and in the dissenting opinion of Justice Miller, affirm the principle above stated; that when the law determined that gold and silver was the only legal money, the use of the terms gold and silver in the contract gave

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

ISRAEL DEMING, APPELLANT,
vs.
THE UNITED STATES. } No. 7.

Brief for the appellees.

AT COMMON LAW.

That portion of this claim which rested upon the imposition of duties upon articles such as were subjects of this contract is understood to be waived by the counsel for the appellant.

To the other portion of the case the defense, aside from the question of the constitutionality of the act of Congress of February 25, 1862, is, in general, as follows:

WAIVER AS TO DUTIES.

In the month of October, 1861, the appellant entered into a contract to furnish rations to the Marine Corps, a part of the navy of the United States, during the year 1862. At that time gold and silver were the only legal money of the United States, and said contract was entered into upon the basis and with the understanding that the payments for such rations were to be made in gold and silver.

Subsequently, under the act of Congress of February 25, 1862, treasury notes of the United States were issued as lawful money, and legal tender in payment (with exceptions not here important) of all debts, public and private, and the same in comparison with the lawful coin of the United States depreciated in value; but becoming the basis of business and of prices in all buying and selling in the United States, such prices increased in proportion to that depreciation. This depreciation of such notes, or, what was equivalent, the increase, caused by their issue, of the prices of the articles furnished by him under this contract, amounted to the sum of three thousand one hundred and eighty-two dollars and four cents. In payment for such articles furnished during the last half of the year 1862, the claimant demanded gold and silver coin, or its equivalent, which was refused; and against his protest he was paid in such notes depreciated to the amount before stated, whereby the whole of such depreciation was inflicted upon him to his loss; and this amount he claimed to recover of the United States, because he was, under that contract, entitled to be paid in coin, or its equivalent, to the amount of the value of the articles furnished under his contract, according to its tenor when entered into.

FIRST.

So far as this appeal presents a claim for damage inflicted by the increase of prices over and above prices existing at the time the contract was entered into, on the ground that such increase was caused by the enactment of February 25, 1862, the counsel for the appellees do not feel called upon to offer any extended argument.

Such damage furnishes no ground of jurisdiction to the Court of Claims; the claim having no support in either an act of Congress, a regulation of an executive department, or a contract, express or implied—that is, as this court have decided, a contract authorized by law. (Bonner, executor, *vs.* the United States; also Filors, administratrix, *vs.* the United States, decided at the present term.)

SECOND.

The appellant has more plausible ground when he alleges a contract on the part of the United States to pay to him what was lawful money at the time said contract was entered into, October, 1861—that is, gold or silver coin; and that such contract has not been fulfilled.

To this aspect of the case the defense is—

I. The appellant has received payment in full for the performance of his contract. The case does not find, but the court will infer from what is set forth in the petition and findings, that the claimant gave a receipt in full. Whether he did or not is not material. The money was offered to him in full payment, (else why should he protest?) and must be held to have been received as offered.

II. After receiving these notes offered as money in payment of his demand, no action for the original debt, or any part thereof, can be maintained by the creditor, except upon return to the paying debtor of the notes so paid and received.

III. Although in this case the contract was entered into prior to the passage of the act of Congress of February 25, 1862, making treasury notes legal tender in payment (generally) of public debts, and of claims and demands against the United States; yet all the alleged fulfillment of this contract occurred after such passage, and thus the debt in this case due from the United States was not a debt existing prior to the passage of that statute, but came into existence afterward. Hence it was payable as provided in that statute and not otherwise.

The decision in the case of Hepburn *vs.* Griswold does not reach this case.

IV. At common law, whatever is lawful money at the time of payment is good in payment on a contract to

pay money, whether the sovereign may have meanwhile changed the coinage or lawful currency, or otherwise.

These points are substantially the same as those stated in the brief for the appellees in the case of Latham *vs.* the United States, submitted herewith; and the decisions which support them are cited in that brief, which makes a part of this argument.

The further and larger question of the constitutionality of the act of Congress of February 25, 1862, under even the most comprehensive interpretation which may be given to its terms, will be treated upon in another brief.

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